

# COUNTY OF YORK

## MEMORANDUM

DATE: September 9, 2004 (BOS Mtg. 9/21/04)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application for exemption from real and personal property taxation pursuant to Code of Virginia §58.1-3651 – Edgehill Association, Inc.

The Edgehill Association, Inc., (The Association) owns real property located in York County at the following addresses. The land is currently assessed for real estate taxation at the values listed for a total of \$190,100. The Association was assessed for real estate taxes in the amount of \$1,554.07 for calendar year 2004. They have not reported ownership of any personal property on which local taxes could be assessed.

	<u>Assessed Value</u>	<u>Tax</u>
700 Cockletown Rd.	\$ 189,500	\$1,549.16
Parcel at NW Side of York Warwick Dr.	\$ 600	\$ 4.91
Total	<u>\$ 190,100</u>	<u>\$1,554.07</u>

The Association, following the procedure outlined in Code of Virginia §58.1-3651, is requesting exemption from real and personal property taxation. Such exemptions may be granted by the Board of Supervisors pursuant to Code of Virginia §58.1-3651 for the “real or personal property taxes, or both, owned by a nonprofit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes.” Further, “no exemption shall be provided to any organization that has any rule, regulation, policy, or practice that unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.”

Code of Virginia §58.1-3651 (copy attached) further sets out the criteria, which must be considered by the Board when adopting any such ordinance. I have repeated each of those criteria below, numbered consistently as set out in the state statute, and below each criteria, in italics, have set out the responsive information. That information and other details are set out in a letter dated July 26, 2004, from Ms. Roxanne Lord, Edgehill President (copy attached).

- 1) Whether the organization is exempt from taxation pursuant to §501(c) of the Internal Revenue Code of 1954.

*The Edgehill Association, Inc., (The Association) is exempt from taxation under §501(c)(7) of the Internal Revenue Code. (See enclosed IRS Form 990). We are incorporated in the State of Virginia.*

- 2) Whether a current annual alcoholic beverage license for serving alcoholic beverages has been issued by the Virginia Alcoholic Beverage Control Board to such organization, for use on such property.

*The Association does not have an alcoholic beverage license issued by the Virginia Alcoholic Beverage Control Board; however, we are permitted to provide alcoholic beverages at private adult parties for members and guests. Those who rent our facility and are serving alcohol beverages must obtain an ABC use permit.*

- 3) Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders.

*No director or officer of The Association is compensated for his or her personal services and The Association has no employees.*

- 4) Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state, or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services.

*None of the net earnings of the organization inures to the benefit of any individual. No funds accrue from local, state or federal grants. The Association accepts donations and contributions, including personal services; however, donations and contributions do not constitute "any significant portion" of The Association's net earnings. (See Form 990, Part VII for analysis of income production.)*

- 5) Whether the organization provides services for the common good of the public.

*The Association provides activities for youth and adults in the neighborhood and maintains properties – the buildings, swimming pool, playground, volleyball court, and baseball field – that serve residents from throughout York County. For instance, both the Cub Scouts and the Boy Scouts use the clubhouse – and most of the boys served are not from Edgehill. The York County Little League uses our baseball field under a six-year no-cost license with The Association. The Edgehill Eels swim team – which consists of youth from both inside and outside Edgehill – is based at our swimming pool, and swim meets held at our pool benefit youth from around the entire area. These services enhance the common good of the public and reduce the demand for County-provided services.*

- 6) Whether a substantial part of the activities of the organization involves carrying on propaganda, or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office.

*Our operating policies restrict political activity. On a nonpartisan basis, we do provide meeting space for political organizations and local public officials are encouraged to address residents' concerns at Association and other community meetings held in our clubhouse. Politicking and lobbying, however, are insubstantial parts of The Association's activities.*

7) The revenue impact to the locality and its taxpayers of exempting the property.

*Exempting The Association's property will have a **positive** impact on the County's revenue and will benefit County taxpayers. The property tax bill received by The Association in 2004 was for \$3,165.37. If exempted from taxation, this amount - .019% of the 2004 York County budget - will be lost to the County. To the County this is an insignificant amount. To The Association, however, this represents 17.24% of our budget and is the equivalent of 18.6 additional active or senior memberships. This is money that would have to be raised either through a membership drive, increased membership fees, or reduced services provided to the community. We have had to already increase our 2004 membership fees by \$20.00 for all membership categories in anticipation of a higher insurance bill after Isabel. Experience has shown that every time we increase the membership fee we LOSE members, and the more we must charge for membership, the harder it is to gain new members. Furthermore, as a mature community, a large number of Edgehill residents are senior citizens living on a fixed income. They can ill afford an increase in fees, and many choose not to participate because their children are already gone and they do not use the facilities. The reality, therefore, is that if we must absorb this year's tax assessment, we will have to consider reducing the services we provide, or put a surcharge on all memberships, which will negatively impact every York County resident who uses the property. (Staff note: the tax amount shown above differs from the final bill because, subsequent to issuance of the initial bill, the value was adjusted).*

*More importantly, the primary value of The Association's property is not in the value of the land itself, but rather the enhanced value it provides to the properties surrounding it. Virginia Code §58.1-3284.1, which establishes the exemption from taxation for automatic membership corporations or associations (i.e., mandatory homeowners' associations) makes this clear:*

- A. *Residential...property, which is part of a planned development which contains open or common space, which includes the right by easement, covenant, deed or other interest in real estate, to the use of the open or common space, shall be assessed at a value which includes the proportional share of the value of such common space.*

*All real property used for open or common space pursuant to this section shall be construed as having no value in itself for assessment purposes. Its only value lies in the value that is attached to the residential or commercial property which has a right by easement, covenant, deed or other interest.*

*Every homeowner in Edgehill has a deeded interest in The Association's property, which itself contains restrictions that it be used for the benefit of the members of the community. The only real difference between the residents of Edgehill and those of developments with automatic membership associations is that Edgehill residents can't be forced to join The Association. Some residents (perhaps most) see this actually as a fact that makes their properties more desirable and thus more valuable. At the same time, the fact that The Association cannot simply pass on a tax increase to a captive membership makes the assessment just that much more onerous.*

- 8) Any other criteria, facts and circumstances that the governing body deems pertinent to the adoption of such resolution.

*Other relevant factors: Section 58.1-3651, paragraph B, also provides that no exemption shall be provided to any organization that discriminates on the basis of religious conviction, race, color, sex or national origin. The Edgehill Association does not engage in any such impermissible discrimination. Our bylaws provide that we accept as members, as our deed from Mr. O'Hara requires, any landowner or resident of Edgehill who wishes to become a member of the Edgehill Association. In addition, we provisionally accept as associate members residents from outside the Edgehill community who wish to participate in Edgehill Association activities, including swimming pool and swim team activities. It is on this basis, and this basis alone, that we determine who may become members of The Association.*

In addition, Code of Virginia §58.1-3651 requires that the ordinance state the specific use on which the exemption is based, and continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated. The classifications available are religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground. The classification that The Association seems to most closely fit is "public park and playground."

In the past, requests for exemption from real and personal property taxation required the Board to pass a resolution making a recommendation to the General Assembly who would in turn consider the request, and, if granted, would codify the exemption. Changes to the Code of Virginia have now passed the granting authority to the local governing body. The Code of Virginia includes the names of the organizations, together with the dates and section numbers of the adopted legislation for which the General Assembly granted real and personal property tax exemption prior to the change to the Code of Virginia. The list includes 1,001 organizations. I have not included copies of those pages from the state code, but they may be found in any copy of the Virginia State Code as §58.1-3650.1 through 58.1-3650.1001.

Furthermore, section 58.1-3651 does not define what is meant by "public park and playground purposes" (the proposed tax exemption category), whether for example a recreational facility must be open without restriction to the all members of the public in order to qualify for a tax exemption under that heading. However, a perusal of the names of the organizations previously granted exemptions by the General Assembly prior to January 1,

2003, before authority to grant such exemptions was passed to local governments, suggests that other organizations similar to The Association have received tax exemptions in the past, although the list of names does not reveal anything about the other organizations' membership restrictions. See, for example, exemptions granted to "Property of Holmes Run Acres Recreation Association, Inc." (2001), and to "Property of Walden Glen Swim and Racquet Club, Inc." (2001). Note that a property tax exemption was granted in 2002 to Running Man Recreation Association, Inc., of York County, even though the information provided to the County at the time of the application indicated that membership was restricted to residents of Running Man. It appears, then, that having a restricted membership policy did not prevent the General Assembly in years past from granting a property tax exemptions under the heading of "public park and playground purposes." In addition, the Board of Supervisors granted a similar request from the Marlbank Recreation Association on July 13, 2004.

Proposed Ordinance No. 04-23 has been prepared for the Board's consideration. If adopted, this ordinance will grant exemption from real and personal property taxation to Edgehill Association, Inc., on the basis of use for public park and playground.

Please let me know if you have any questions.

White/3737

#### Attachments

- Code of Virginia §58.1-3651
- Letter from Roxanne Lord, President, Edgehill Association, Inc., dated July 26, 2004 (with attachments)
- Proposed Ordinance No. 04-23